IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 91 OF 2003

Shri Sitakant M. Gharse,
Age 63, landlord, resident
of H. No.119, Balli,
Cuncolim, Salcete, Goa. ... Appellant

versus

1. Special Land Acquisition
   Officer, South Goa, KRCL,
   Amey Guest House,
   Davorlim Road, P O Navelim,
   Salcete, Goa – 403 707.

2. The Chief Engineer,
   Konkan Railway Corporation
   Ltd., through Senior Railway
   Manager, Konkan Railway
   Head Office, Rawanfond,
   Margao, Goa. ... Respondents

Mr. S. G. Dessai, Senior Advocate with Mr. M. Shirodkar, Advocate for the Appellant.

Mr. E. Afonso, Advocate for the Respondents.

CORAM : B. H. MARLAPALLE &
N. A. BRITTO, JJ.

DATE **:** 13TH OCTOBER,2004.

ORAL JUDGMENT(PER N.A.BRITTO, J.)

This appeal is filed by the unsuccessful Applicant in Land

Acquisition Case No. 287/94 against the Judgment/Award dated 25th August, 2000.

2. By Notification published under Section 4(1) of the Land Acquisition Act, 1861, on Gazette dated 27th June, 1991, the Government had acquired about 81618 sq. meters of land for the purpose of constructing new BG line for Konkan Railway in Village Balli of Quepen Taluka from survey nos.45/1, 45/5, 45/6, 51/1 and 51/2. By Award dated 7th December, 1993, the Land Acquisition Officer awarded the said Applicant compensation at the rate of Rs.12/- per sq. meter.

3. Dissatisfied with the said Award of the Special Land Acquisition Officer dated 7th December, 1993, the Applicant got a reference made to the District Court.

4. When the reference came up for hearing on 16th September, 1999, the examination and cross-examination of the said Applicant was partly recorded and the case was fixed on 4th November, 1999 and then adjourned to 28th January, 2000, and again on 30th March, 2000, and yet again on 13th July, 2000. On these dates, it is either the Applicant or his lawyer who did not appear before the Court as a result of which the evidence of the Applicant remained inconclusive but the learned Reference Court on 25th

August, 2000, proceeded to pass the Judgment/Award by closing the case of the Applicant and as the Respondent did not wish to lead any evidence, in rebuttal.

5. It is the contention of the Appellant/Applicant, that his Advocate did not inform him that he had to come to the Court on the next date i.e. on 4th November, 1999, and he came to know about the dismissal of his reference for the first time in August, 2002.

6. Mr. S. G. Dessai, learned Senior Counsel of the Appellant/Applicant has submitted that the Advocate appearing for the Applicant not only did not inform the Applicant of the next date of hearing but subsequently, when the Applicant tried to contact him he was unavailable. It is his submission that the Applicant has been deprived of leading evidence in the matter.

7. We have examined the records of the learned trial Court and we find that on 16th September, 1999, the evidence of the Applicant was recorded partly and then, the case was adjourned for further cross-examination on 4th November, 1999, on which date, the Advocate of the Applicant remained present but the Applicant was found to be absent. On the next date i.e. on 28th January, 2000, the case had to be adjourned for want of time. On 30th March, 2000, the Applicant was absent and again the case had to be adjourned at the request of the Applicant's Advocate. On 13th July, 2000, neither the

Applicant nor his Advocate appeared and as such, a last opportunity was given to the Applicant to remain present for cross-examination on 25th August, 2000. Since, on 25th August, 2000, neither the Applicant nor his Advocate were present, the learned Reference Court considered the evidence produced and proceeded to pass the Judgment/Award dismissing the reference.

8. We are of the view that the Applicant ought not to be penalised for non appearance of his Counsel on the dates fixed for hearing. In our view, this would be a fit case to set aside the Judgment/Award of the learned Reference Court to enable the Applicant to lead evidence in the said reference. However, we are of the view that the conduct of the Applicant has not been entirely without blemish and, therefore, this is a fit case to impose costs of Rs.5000/- to be paid by the Applicant within four weeks. The said costs shall be paid to the State Legal Services Authority, Panaji. The Judgment and Award, therefore, is hereby set aside on the above terms.

9. The parties are directed to remain present before the learned Reference Court on 1st November, 2004, at 10.30 a.m. The learned Reference Court is hereby directed to decide the reference as expeditiously as possible and in any event within a period of six

months from 1st November, 2004. Both the parties will be at liberty to lead evidence as considered necessary.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.

RD.